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6 **UNITED STATES DISTRICT COURT**
7 **DISTRICT OF NEVADA**

8 DENNIS K. SUDBERRY,

9 *Petitioner,*

10 vs.

11 ISIDRO BACA, et al.,

12 *Respondents.*
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3:15-cv-00361-RCJ-WGC

ORDER

15 Petitioner, a Nevada prisoner, has filed a petition for writ of habeas corpus pursuant to 28 U.S.C.
16 § 2241 (ECF No. 2) and has paid the filing fee (*see* ECF No. 1). The court has reviewed the petition
17 pursuant to the Rules Governing Habeas Cases, and the petition must be dismissed as unexhausted.

18 As a prudential matter, courts require that habeas petitioners exhaust all available judicial and
19 administrative remedies before seeking relief under § 2241. *Ward v. Chavez*, 678 F.3d 1042, 1045 (9th
20 Cir. 2012); *Castro–Cortez v. INS*, 239 F.3d 1037, 1047 (9th Cir.2001), abrogated on other grounds,
21 *Fernandez–Vargas v. Gonzales*, 548 U.S. 30 (2006). This exhaustion requirement is subject to waiver
22 in § 2241 cases because it is not a “jurisdictional prerequisite.” *Id.* Typically, exhaustion can be waived
23 “if pursuing those [administrative] remedies would be futile.” *Fraley v. U.S. Bureau of Prisons*, 1 F.3d
24 924, 925 (9th Cir.1993).

25 Petitioner indicates on the face of his petition that while he “went through the grievance
26 system,” he has not pursued state habeas relief on his claims (ECF No. 2, p. 3). Thus, the present action
27 will be dismissed without prejudice because petitioner has failed to exhaust judicial remedies. Upon
28 exhausting his claims, petitioner may file a new habeas petition pursuant to 28 U.S.C. § 2241 on the

1 form required by this court in a new action with either the \$5.00 filing fee or a completed application
2 to proceed *in forma pauperis* on the proper form with both an inmate account statement for the past six
3 months and a properly executed financial certificate.

4 Petitioner at all times remains responsible for properly exhausting his claims, for calculating the
5 running of the federal limitation period as applied to his case, and for properly commencing a timely-
6 filed federal habeas action.

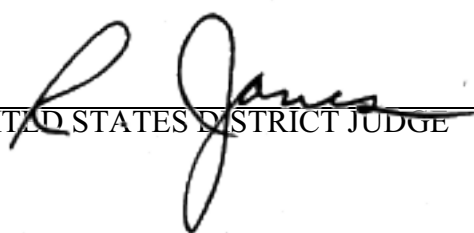
7 **IT IS THEREFORE ORDERED** that § 2241 petition is **DISMISSED** without prejudice.

8 **IT IS FURTHER ORDERED** that a certificate of appealability is **DENIED**, as jurists of
9 reason would not find the court's dismissal of this unexhausted action without prejudice to be debatable
10 or incorrect.

11 **IT IS FURTHER ORDERED** that the Clerk shall send petitioner two copies each of an
12 application form to proceed *in forma pauperis* for incarcerated persons and a Section 2241 habeas
13 petition form, one copy of the instructions for each form, and a copy of the papers that he submitted in
14 this action.

15 **IT IS FURTHER ORDERED** that the Clerk shall **ENTER JUDGMENT** accordingly and
16 close this case.

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19 DATED: This 9th day of November, 2015.

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UNITED STATES DISTRICT JUDGE
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